IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DANIEL J. CAMPBELL,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:05cv487
vs.	:	
	:	District Judge Susan J. Dlott
WARDEN, Lebanon Correctional Institution,	:	
	:	
Respondent(s).	:	

ORDER

The Court has reviewed the Report and Recommendations of United States Magistrate Judge Timothy S. Hogan filed on August 31, 2006(Doc. 18), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired September 21, 2006, hereby ADOPTS said Report and Recommendations.

Accordingly, Petitioner's Motion "to hold proceedings in abeyance" (Doc. 13) is DENIED.

Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) is DISMISSED without prejudice to refiling after Petitioner has exhausted the available remedy of a delayed application to reopen his appeal pursuant to Ohio R. App. P. 26(B), in addition to the currently pending appeal from the denial of his Motion to Correct Sentence, through the requisite levels of state court review.

A certificate of appealability does not issue under the standard set forth in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), because "jurists of reason" would not find it debatable whether this Court is correct in its procedural ruling that petitioner has failed to exhaust state

remedies and that this case is DISMISSED without prejudice pending exhaustion of such remedies. [1] *Cf. Mingo, supra,* 2006 WL 151901, at *4.

With respect to any application by Petitioner to proceed on appeal *in forma pauperis*, the Court certifies pursuant to 28 U.S.C. § 1915 (a)(3) that an appeal of this Order adopting the Report and Recommendation is not taken in "good faith," and therefore DENIES Petitioner leave to appeal *in forma pauperis. See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

s/Susan J. Dlott
Susan J. Dlott
United States District Judge

[1]Because this Court finds the prong of the *Slack* standard has not been met in this case, it need not address the second prong of *Slack* as to whether or not "jurists of reason" would find it debatable whether petitioner has stated viable constitutional claims for relief in his habeas petition. *See Slack*, 529 U.S. at 484.